IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12763 of 1993

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LADOL MILK PRODUCING CO-OP SOC

Versus

DIST REGISTRAR OF CO-OP SOC

Appearance:

1. Special Civil Application No. 12763 of 1993

MR TUSHAR MEHTA for Petitioner No. 1

MR LB DABHI AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 4

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 17/08/2004

ORAL JUDGEMENT

The petitioner- Shree Ladol Milk Producing Cooperative

Society Limited has challenged the impugned order dated 11.10.1993 passed by the respondent no.3.

The petitioner Society has contended that no any notice under Section 107(3) has been received by it and, therefore, there is a breach of principles of natural justice and violation of Article 14 in passing the order by the District Cooperative Registrar, Mehsana, dated 4/6-12-1991, and appeal decided by the Dy.Secretary (Appeals) Cooperation Department, Gujarat State, on 11.10.1993 and subsequent action of declaring the petitioner society under liquidation order, on the ground of violation of provisions of Section 107(3) of the Gujarat Cooperative Societies Act, 1961 and the principles of natural justice, as well as, infraction of provisions of Article 14 of the Constitution.

The controversy has shrunk down in a very narrow dimension in this petition and, therefore, it would not detain us anylonger for the reason that admittedly, the registered notice sent to the Society was never received by the society or the responsible office bearer of the society. On the contrary, the stand taken by the respondents has been that the notice could not be served, as there was none, at the place of the registered society and ex parte proceedings before the authorities below culminated into passing of the impugned orders. The endorsement of the postal authority on the envelope "refused" is a different connotation, whereas, in the present case, it is an admitted fact that the addressee society to whom the notice was sent under section 107(3) of the Act was not found. This cannot tantamount to service in any case, under any provisions, muchless, the General Clauses Act. The Registrar is authorized to make a final order for winding up or for taking action under section 107 of the Act. In Chapter 10, section 109 of the Act provides the provisions and procedure for liquidation of a cooperative society for taking final decision under section 107. The Registrar is obliged to give an opportunity to the society and, thereafter, he can pass the final order. When no hearing is taken place, and no opportunity to the petitioner societyaddressee has been rendered, the presumption of service cannot be drawn. On the contrary, it tantamounts to "no service" for taking extreme action or major action under section 107 of the Act, which provides for liquidation of a cooperative society is a serious action and, therefore, the society is entitled to serve with a notice before the final order is passed by the Registrar. Since, this process has not been followed, obviously, the impugned orders are violative of the principles of

natural justice and rule of "audi alteram partem " as well as, the provisions of Article 14. This proposition is very well settled by the decision of the Division Bench of this Court rendered in Apexa Co.opertive Bank Ltd. Vs. District Registrar and others, 1993(2) GLH 861. Similarly this Court in Mahasukhlal Nandlal Doshi and ors. Vs. State of Gujarat and ors., 1993 (2) GCD 98 (Guj), it has been held that the statutory requirement of giving an opportunity of hearing to the society or any of its members, has to be followed and in that case, since it was not followed, it has been held in that case that the there was a violation of principles of natural justice and orders were declared illegal and came to be quashed. The ratio of the said decision is squarely attracted to the facts of the present case.

In the net result, the impugned orders are hereby quashed and set aside on the aforesaid grounds with a clarification that it will be open for the respondents authorities to take further action, after following the requisite statutory provisions, including giving an opportunity of hearing. With these observations, the petition is required to be allowed. Accordingly, it is allowed. Rule is made absolute. No order as to costs.

[J.N.BHATT, J]

SNS